



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32372488

Date: JULY 16, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a gymnastics trampoline and tumbling coach, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their field. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met one of ten initial evidentiary requirements – two less than needed for a final merits determination. On appeal, the Petitioner contends that she satisfied two other evidentiary criteria: evidence of her membership in associations requiring outstanding achievements in the field; and documentation of her performance in a leading or critical role for organizations with distinguished reputations. She also argues that she submitted “comparable evidence” of lesser nationally or internationally recognized awards for excellence in the field.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has submitted evidence of her performance in a critical role for an organization with a distinguished reputation. But, because she has not met the requisite number of initial evidentiary criteria, we will dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence must demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).¹

If a petitioner meets either of the evidentiary criteria above, USCIS must make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field’s very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (upholding USCIS’ two-step review process as “consistent with the governing statute and regulation”); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows that the Petitioner, a Kazakhstani native and citizen, served as head coach of her country’s trampoline and tumbling gymnastics team from 2013 to 2018.² Now in the United States, she works as a power tumbling program director and head coach at an acrobatics and gymnastics academy. She seeks to continue coaching gymnastics in this country.

The Petitioner does not claim – nor does the record show – her receipt of a major, international award. She must therefore meet at least three of the ten initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i)-(x). When assessing whether evidence satisfies the regulatory criteria, USCIS determines whether materials “objectively meet[] the parameters of the regulatory description that applies to that type of evidence.” 6 *USCIS Policy Manual* F.(2)(B).

The Director found that the Petitioner submitted documentation of her participation as a judge of the work of others in the field. *See* 8 C.F.R. § 204.5(h)(3)(iv). But the Director concluded that the Petitioner provided insufficient evidence that she: received lesser nationally or internationally recognized awards for excellence in the field; obtained membership in associations requiring outstanding achievements in the field; performed in leading or critical roles for organizations with distinguished reputations; or provided comparable evidence of her eligibility. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (viii), (4).

A. Membership in Associations

This criterion requires “[d]ocumentation of the [noncitizen]’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” 8 C.F.R. § 204.5(h)(3)(ii).

¹ If the evidentiary standards do not “readily apply” to a petitioner’s occupation, the noncitizen may submit “comparable evidence” to establish eligibility. 8 C.F.R. § 204.5(h)(4).

² A copy of a news article that the Petitioner submitted identifies another person as the national team’s head coach in 2016. The Director did not notify the Petitioner of this discrepancy. Thus, in any future filings in this matter, she must explain why the article lists the purported chief judge of Kazakhstan’s national gymnastics championships as the team’s 2016 head coach. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The Petitioner contends that, as coach, she was a member of the Kazakhstan national trampoline and tumbling team from 2013 to 2018. She submitted copies of her team coach identification badges from the International Gymnastics Federation (FIG) [redacted] Competitions in 2013 and the 2015 Trampoline and Tumbling [redacted]. She also submitted letters from Kazakhstan Gymnastics Federation officials and the federation's rules for selecting national team coaches.

The Director found insufficient evidence that the beneficiary is a member of an association or that "the basis for granting membership in the submitted association was the beneficiary's outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field."

A preponderance of the evidence establishes that the Petitioner's role as coach of the Kazakhstan national trampoline and tumbling team constituted team membership. Letters from Kazakhstan Gymnastics Federation officials state: "We confirm [that the Petitioner], in her capacity as National Team Coach, is/was a member of the National Trampoline and Tumbling Team of the Republic of Kazakhstan."³ Also, a copy of the federation's rule "Criteria for the Selection of a National Team Coach" outlines how coaches are considered "for selection to the Kazakhstan National Trampoline Team." The Petitioner therefore has demonstrated her membership on the Kazakhstan national trampoline and tumbling team.

Citing prior non-precedent decisions of ours, the Petitioner contends that memberships on national teams satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii). In a February 2009 decision involving a member of Georgia's national freestyle wrestling team who later became a member of the republic's Olympic team, we stated: "Membership on an Olympic team or a major national team such as a World Cup soccer team can serve to meet this criterion. Such teams are limited in the number of members and have a rigorous selection process." In that case, we found that the wrestler did not meet the evidentiary requirement because the record did not show his membership on the Olympics team until after the petition's filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request"). Also, we found that he did not submit evidence of the selection process and membership requirements for the Georgian national freestyle wrestling team.⁴

As previously indicated, the Petitioner submitted evidence regarding the selection process and membership requirements for a Kazakhstani national team coach. But current USCIS policy generally does not consider an athletic team to constitute an "association" under 8 C.F.R. § 204.5(h)(3)(ii). Under Agency policy, "[e]lection to a national all-star or Olympic team might serve as *comparable evidence* for evidence of memberships in 8 C.F.R. § 204.5(h)(3)(ii)." 6 *USCIS Policy Manual* F.(2)(B)(1) (emphasis added). Thus, USCIS policy indicates that the evidentiary requirement for association membership does not "readily apply" to an athletic team membership. *See* 8 C.F.R. § 204.5(h)(4). Also, we need not follow our prior *non-precedent* decisions cited by the Petitioner. *See* 8 C.F.R. § 103.10(b) (requiring USCIS to follow *precedent* decisions in proceedings involving the

³ A 2018 letter from the federation's secretary general states that the Petitioner "is" a team member. A 2022 letter from the federation's technical committee president, issued after the Petitioner's move to the United States, states that she "was" a team member.

⁴ We were unable to immediately access a copy of *In Re*: [redacted] (AAO Sep. 10, 2002), the other decision that the Petitioner cites. But she cites the case for the same proposition as the February 2009 decision.

same issues). We therefore agree with the Director that, contrary to 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner did not establish herself as a member of an association.

The Petitioner further contends that her selection as Kazakhstan national team coach required outstanding achievements as judged by recognized national or international experts in the field. She submits evidence that, to annually obtain the team coach position, she had to have coached a team athlete to a national championship and received the votes of a three-person selection committee.

But the copy of the Kazakhstan Gymnastics Federation rule for selecting a national team coach that the Petitioner submitted bears a date of 2020, two years after she left the team. The record does not demonstrate that the same rule applied when she served as national team coach from 2013 to 2018. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies with independent, objective evidence). Thus, even if the Petitioner's team membership equated to membership in an association, the record does not establish that, during her tenure, her selection as national team coach required outstanding achievements as judged by recognized national or international experts in the field.

For the foregoing reasons, the Petitioner has not demonstrated her satisfaction of the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(ii).

B. Performance in a Leading or Critical Role

To meet this requirement, a petitioner must submit “[e]vidence that the [noncitizen] has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” 8 C.F.R. § 204.5(h)(3)(viii).

First, USCIS determines whether a petitioner has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. 6 *USCIS Policy Manual* F.(2)(B)(1). Evidence of a leading role must demonstrate that a petitioner is (or was) a leader within the organization. *Id.* In contrast, evidence of a critical role must establish that a petitioner “has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.” *Id.*

Second, USCIS determines whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation. 6 *USCIS Policy Manual* F.(2)(B)(1). The term “distinguished” means “marked by eminence, distinction, or excellence” or “befitting an eminent person.” Merriam-Webster Dictionary, www.merriam-webster.com. Factors include not only an organization’s relative size or longevity, but also the scale of its service base or relevant media coverage. 6 *USCIS Policy Manual* F.(2)(B)(1).

The Petitioner argues that she meets this evidentiary requirement both as former coach of the Kazakhstan national trampoline and tumbling team and in her current role as power tumbling program director and head coach at the U.S. acrobatics and gymnastics academy. She contends that the Director erred in finding insufficient evidence that she performed in a leading or critical role or that the organizations have distinguished reputations.

The Petitioner has not demonstrated the purported distinguished reputation of her current employer. The record shows that the acrobatics and gymnastics academy began operations in 2008. But the academy's owner/acrobatics program director stated that the facility did not produce a medal-winning athlete at a major international event until 2022. The Petitioner provided information about itself and its faculty. But the record lacks independent, objective evidence of the academy's purported eminence. Thus, based on the Petitioner's current role, she has not satisfied the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner, however, has demonstrated that she meets this requirement based on her former work in Kazakhstan. Letters from the republic's gymnastics federation and copies of competition results describe the international successes of her team's athletes during her coaching tenure. Also, an expert letter from another experienced coach and director of a U.S. gymnastics academy discusses Kazakhstan's "historically strong international rating" in the field. The expert stated: "A coach's assignment to the Kazakhstan national trampoline and tumbling team automatically places him or her at the top of the field by the highest international standards." Thus, contrary to the Director's finding, the Petitioner's evidence demonstrates her performance in a critical role for an organization with a distinguished reputation. *See 6 USCIS Policy Manual F.(2)(B)* ("[A]lthough some of the regulatory language relating to evidence occasionally uses plurals, it is entirely possible that the presentation of a single piece of evidence in a specific evidentiary category may be sufficient.")

C. Comparable Evidence

As previously noted, if the initial evidentiary criteria do not "readily apply" to a petitioner's occupation, the noncitizen "may submit comparable evidence to establish [their] eligibility." 8 C.F.R. § 204.5(h)(4). When evaluating comparable evidence, USCIS must consider whether a regulatory criterion is easily applicable to a petitioner's occupation and, if not, whether the evidence provided is truly comparable to the listed criterion. *6 USCIS Policy Manual F.(2)(B)(1)*.

The Petitioner contends that documentation of her students' receipt of lesser nationally or internationally recognized awards for excellence in the gymnastics field are comparable to the requirement for evidence of her own such awards. *See 8 C.F.R. § 204.5(h)(3)(i)*. She states that:

evidence of awards won by students under the coach's tutelage does not 'fit' under any of the 10 [evidentiary] criteria, and yet, evidence of such awards is arguably the single most important and relevant evidence of the coach's own level of accomplishment.

The Petitioner cites five non-precedent decisions of ours between 2005 and 2013 treating athletes' awards as comparable evidence to awards for their coaches. She argues that our decisions did not require the petitioners to establish the unavailability of coaching awards.

Under current USCIS policy, however, petitioners seeking to use comparable evidence must demonstrate the inapplicability of the relevant evidentiary criteria to them. *See 6 USCIS Policy Manual F.(2)(B)(1)*. Contrary to the Agency's policy, the Petitioner has not established the inapplicability of the award criterion at 8 C.F.R. § 204.5(h)(3)(i) to gymnastics coaches. The two gymnastics experts whose letters the Petitioner submitted both claim to have won "Coach of the Year" awards. The Petitioner has not demonstrated the unavailability of such awards for gymnastics coaches

in Kazakhstan. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) (“A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner’s occupation is not probative.”) Also, as previously indicated, the non-precedent AAO decisions cited by the Petitioner do not bind us in this matter. *See* 8 C.F.R. § 103.10(b). She therefore has not properly used comparable evidence to meet the requirement at 8 C.F.R. § 204.5(h)(3)(i).

For the foregoing reasons, the Petitioner has not met the requisite number of initial evidentiary criteria. We will therefore affirm the petition’s denial.

D. Final Merits Determination

Our decision regarding the initial evidentiary requirements resolves this appeal. Thus, we need not reach and hereby reserve the Petitioner’s arguments regarding a final merits determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite number of initial evidentiary criteria. We will therefore affirm the petition’s denial.

ORDER: The appeal is dismissed.